



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

TJR
Docket No: 3984-00
1 December 2000



Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record, and applicable statutes, regulations, and policies.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found you enlisted in the Navy on 26 January 1972 at the age of 17.

Your record reflects that following a series of medical examinations during the period from 31 May to 20 November 1972, you were diagnosed with a status post compression fracture of the third thoracic vertebrae. At this time you were recommended for a six month period of limited duty.

Your record further reflects that on 12 April 1973 you received nonjudicial punishment (NJP) for absence from your appointed place of duty. The punishment imposed was restriction for 14 days. On 9 May 1973 you received NJP for unauthorized possession of an identification card and were awarded a \$25 forfeiture of pay. On 10 December 1973 you were convicted by summary court-martial (SCM) of a 42 day period of unauthorized absence (UA).

You were sentenced to restriction for 30 days and reduction to paygrade E-2. Shortly thereafter, on 20 December 1973 you received NJP for disobedience and using provoking words. The punishment imposed was restriction for 10 days and reduction to paygrade E-1.

On 3 July 1974 you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for three periods of UA totalling 160 days and two incidents of breaking restriction. Your record reflects that prior to submitting this request for discharge, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted and your commanding officer was directed to issue you an other than honorable discharge by reason of the good of the service. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. On 30 July 1974 you were so discharged.

The Board, in its review of your entire record and application, carefully considered all mitigating factors, such as your youth and immaturity and your contention that your periods of UA were due to your broken back. The Board further considered your contention that your discharge should be upgraded because you served during the Vietnam era. However, the Board found the evidence and materials submitted were not sufficient to warrant recharacterization of your discharge given your frequent misconduct, lengthy periods of UA, and your request for discharge to avoid trial. The Board believed that considerable clemency was extended to you when your request for an undesirable discharge was approved since, by this action, you escaped the possibility of confinement at hard labor and a punitive discharge. The Board noted that there is no evidence in your record, and you submitted none, to support your contentions. Further, the Board concluded that you received the benefit of your bargain with the Navy when your request for a clemency discharge was granted and should not be permitted to change your discharge now. Accordingly, your application has been denied.

The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director